— In the contested decision, the Commission declares the applicant's request for internal review inadmissible in so far as the request relates to an administrative act taken by the Commission as administrative review body. Such acts are excluded, under Article 2(1)(g) of the Aarhus Regulation, from the scope of the review procedure of Article 10 of the Aarhus Regulation. That decision is unlawful because the request for internal review relates to a Commission decision taken in the context of a complaint procedure, whereby it takes a purely interpretative position and thus does not act as an oversight body (such as in infringement proceedings, for example). The decision therefore does fall within the material scope of the review procedure of Article 10 of the Aarhus Regulation.

— By its decision of inadmissibility, the Commission breaches the objectives of the Aarhus Regulation and the Aarhus Convention, in particular ensuring effective access to justice in environmental matters.

— In the alternative, if it were nevertheless to be held that, pursuant to Article 2(1)(g) of the Aarhus Regulation, a Commission decision following a complaint does not fall within the scope of the review procedure of Article 10 of the Aarhus Regulation (quod non), it must be held that Article 10 of the Aarhus Regulation in conjunction with Article 2(1)(g) thereof is contrary to the Aarhus Convention and accordingly should be disapplied by way of plea of illegality.

2. Second plea in law, alleging infringement of Article 5 of the Aarhus Convention, Articles 2 and 8 ECHR, Articles 2 and 7 of the Charter of Fundamental Rights of the European Union, Article 3(3), Article 9, Article 168(1) and Article 191(1) and (2) TFEU and Articles 6, 7, 23 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe ('the Air Quality Directive'), as well as of Annex III and Annex XI, point B thereto.

— The Commission does not carry out a substantive assessment in the contested decision and accordingly fails to recognise that the Netherlands Government always assesses the air quality along busy roads that traverse build-up areas (such as in Helvoirt) at more than ten metres from the kerbside, as a result of which exceedances of air pollution standards at these locations are not registered, resulting in the known dangers to public health. This practice of the Netherlands is contrary to Annex II, Section C to the Air Quality Directive, which describes the assessment of air quality and the siting of sampling points, specifying in particular that that assessment is to be made at no more than ten metres from the kerbside, in so far as is practicable.

— The Commission also fails to recognise that the Netherlands Government classifies the area in question of Helvoirt as a rural area, even though it is indeed quite an urban area, and that the wrong modelling techniques are therefore being applied. This also has the consequence that exceedances of air pollution standards are not determined.

— In addition, the Commission fails to recognise that, by this unlawful practice, not only are exceedances not recorded, but that as a consequence no air quality plan has yet been drawn up for the Helvoirt area, even though the Netherlands Government is obliged to do so pursuant to Article 23(1) of the Air Quality Directive.

— Lastly, the Commission fails to recognise that, by this unlawful practice, the Netherlands Government adversely affects not only the right of every European Union citizen to access correct environmental information, but also the right of every European Union citizen to life and good health.

Action brought on 23 September 2020 — Italia Wanbao-ACC v Commission

(Case T-583/20)

(2020/C 378/52)

Language of the case: Italian

Parties

Applicant: Italia Wanbao-ACC Srl (Borgo Valbelluna, Italy) (represented by: P. Ferrari and F. Filì, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Primarily:

— annul European Commission Decision of 15 May 2020, Case M.8947 — Nidec/Whirlpool (Embraco Business), C(2020) 3118 final, published on 14 July 2020 (Decision 2), in its entirety;

— In the alternative:

— annul Decision 2 to the extent to which it waives the prohibition on reacquisition, for the purposes of paragraph 5 of the Commitments, in relation to the assets, patents, intellectual-property rights and knowhow, technology rights, development projects, contracts and relationships with clients and suppliers, client lists, other data and information and personnel connected to the VSD version of the Delta Series.

— In any event:

— order the Commission to pay the costs of the present proceedings;

— adopt any other measure which it considers appropriate.

Pleas in law and main arguments

The present action has been brought against the decision of 15 May 2020 by which the Commission waived the 'non-reacquisition' clause relating to the acquisition by Nidec Corporation of control of the refrigeration compressor sector belonging to Whirlpool Corporation (Case M.8947 — Nidec/Whirlpool (EMBRACO BUSINESS)); that clause was provided for in the decision of 12 April 2019 declaring the transaction compatible with the internal market while making that declaration subject to certain conditions.

In support of the action, the applicant relies on four pleas in law.

1. First and second pleas in law, alleging incorrect application and misinterpretation of the legal rules and distortion of the clear sense of the evidence

   — The applicant argues in this regard that an amendment to structural commitments such as that here at issue may be authorised by the Commission solely in exceptional circumstances, that is to say, when changes occur in market conditions that are (i) significant, (ii) durable and (iii) unforeseeable. In addition, (iv) the competitive reason that led to the adoption of the Commitments must have disappeared. The conditions in points (i) to (iv) are cumulative. However, none of those conditions is satisfied in the present case.

   — As for the condition of significant scope (point (i)) and that of the disappearance of competitive reasons connected to the Commitments (point (iv)), the assessment of the evidence carried out by the Commission appears, in the view of the applicant, to be entirely distorted, and the reading and analysis of that evidence appear to be manifestly unreasonable.

2. Third and fourth pleas in law, alleging insufficient investigation and an insufficient statement of reasons and inconsistency with previous decisions

   — The applicant submits in this regard that the analysis of the market shares in the decision is focused solely on data relating to volumes, entirely disregarding data relating to value. Such an approach not only leads to a partial analysis but also appears to be at variance with the Commission's decision of 12 April 2019, Case M.8947, C(2019) 2734 final.

   — The applicant further submits, also in relation to the data concerning market shares, that the decision appears to be based exclusively on the estimates provided by Nidec, that is, one single operator, which is, moreover, a directly interested party. The Commission ought, at the very least, to have been required to collect information also from other operators (by way of requests for information, that is, market tests).